

OFFICE OF THE CLERK
**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

Robert H. Jackson
United States Courthouse
2 Niagara Square
Buffalo, New York 14202
Phone: 716-551-1700
Fax: 716-551-1705

MARY C. LOEWENGUTH
CLERK OF COURT

PATRICK J. HEALY
CHIEF DEPUTY CLERK

Kenneth B. Keating
Federal Building
100 State Street, Room 2120
Rochester, New York 14614
Phone: 585-613-4000
Fax: 585-613-4035

Notice Concerning Waiver of Judicial Disqualification

Canon 3D of the Code of Conduct provides (with exceptions not pertinent to this case) that when a judge is disqualified in a proceeding because “the judge’s impartiality might reasonably be questioned,” the judge may participate in the proceeding only if all the parties and lawyers, after notice of the basis for the disqualification, have an opportunity to confer outside of the presence of the judge and all agree in writing or on the record to waive the disqualification under a procedure independent of the judge’s participation.

Unless a waiver is obtained from all parties and all counsel, Judge Sinatra intends to disqualify in this proceeding because of these circumstances: partners at his former law firm, Hodgson Russ, serve as trustees of a defined benefit plan that will pay Judge Sinatra a pension benefit upon retirement. That future pension benefit does not depend on Hodgson Russ for its viability, and investment decisions are made by an independent professional. This disqualification is subject to remittal by the parties: the judge may participate in this case if, in light of this disclosure, the parties and their lawyers have an opportunity to confer outside the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate. Any such remittal agreement should be incorporated in the record of the proceeding.

If you and your client(s) wish to waive the judge’s disqualification, a letter to that effect from you and from your client(s) must be mailed to the Clerk of Court within 14 days of the date of this Notice. A sample letter is enclosed. The letter should be signed and submitted by the attorney of record only after consultation with all of his or her clients in this cause. The letters should **not** be sent to the judge and copies should **not** be sent to other counsel.

DO NOT E-FILE YOUR LETTER(S). SUBMIT DIRECTLY TO THE CLERK OF COURT.

If all parties submit such letters, this Notice and all responses will be made part of the record, as required by Canon 3D, and the judge will continue participation in the proceeding. If a waiver is not received on behalf of all parties and their respective counsel, any responses will be kept under seal by the clerk and not shown to the judge, nor will the judge be informed of the identity of any party or lawyer who declined to waive the disqualification. If the disqualification is not waived, the case will be reassigned to another judge.

Signed,

/s/ Mary Loewenguth

Clerk of Court
United States District Court for the
Western District of New York

**NOTICE TO ATTORNEYS: DO NOT E-FILE THIS FORM; SUBMIT DIRECTLY TO
THE CLERK OF COURT**

From:

To: Clerk of the Court
United States District Court
for the Western District of New York
2 Niagara Square
Buffalo, NY 14202

Date:

Re Case:

Dear Clerk:

I have consulted with my client(s), _____,
which are all of the clients that I represent in the above-styled and numbered cause,
concerning the Clerk's Notice that Judge Sinatra intends to disqualify himself from this
case because his impartiality might reasonably be questioned. My client(s) and I
hereby waive this disqualification. We are willing to proceed forward with Judge Sinatra
presiding.

Pursuant to Canon 3D of the Code of Conduct, I am submitting this letter to the Clerk's
office, but I am not copying Judge Sinatra, nor am I copying the other counsel of record
or the other parties.

Yours truly,
/s/

Attorney of Record, on behalf of: